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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,973	01/20/2004	Elchonon Schwartz	2003ESCHWARTZ1	4608

7590

06/29/2006

Esther E. Schwartz  
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EXAMINER
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ANDERSEN, MICHAEL T

ART UNIT	PAPER NUMBER
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3734

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/760,973

Applicant(s)

SCHWARTZ ET AL.

Examiner

M. Thomas Andersen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 2, 15, 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claims 2, 15, and 20 are objected to because of the following informalities: it is unclear what is meant by "destroy" in claims 2 and 20. Also, it is unclear what is meant by "a child-friendly manner." Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 4-7, 9, and 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Shefflin, U.S. Patent No. 5,948,003.

Claim 2: Shefflin discloses a pacifier attacher comprising a length of flexible material with two opposite extremes, the first extreme containing a substantially flat means 10 to detachably attach the flexible material to a baby's garment comprising a repositionable adhering material, the second extreme containing a means for attaching a pacifier to the flexible material.

Claim 4: The flat means is a reusable fabric grip attaching means capable of detachably attaching to fabric.

Claim 5: The flat means can be considered disposable.

Claim 6: The flexible material is considered disposable.

Claim 7: The first extreme end is formed into a design.

Claim 9: The means for attaching can be a permanent loop (See Shefflin, col. 3, lines 36-40).

Claim 17: The first extreme 10 is thicker than the remaining length of the flexible material.

Claim 18: The first extreme 10 is wider than the remaining length of the flexible material.

Claim 19: The flexible material (excluding the clip 10) is of the same width throughout.

Claim 20: The pacifier attacher comprises two opposed attaching means (20 and 22) at the second extreme end.

Claim 21: The opposed attaching means comprise opposed hook and pile fasteners.

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Sagman, U.S. Patent No. 6,434,797. Sagman discloses a pacifier attacher with a flexible material, two opposite extremes, and opposed snap members on the second extreme.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Reid, U.S. Patent No. 5,156,617. Reid discloses a pacifier attacher with a flexible material and means for attaching the pacifier to the flexible material, and means for attaching the flexible material to the baby's clothing. The flexible material can be considered to be stuffed with another material, i.e., the snap 32.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shefflin, as applied to claim 2 above, and further in view of Bergemann, U.S. Patent No. 6,367,088. Shefflin does not expressly disclose an adhesive to attach the pacifier to clothing. However, Bergemann discloses that it is old and well known in the art to attach material to clothing by means of an adhesive (figure 2). It would have been obvious to use an adhesive to attach the pacifier to the baby's clothing rather than a clip because it is common to use an adhesive on clothing, as evidenced by Bergemann.

Claim 23 is rejected under 35 U.S.C. 103(a) as being obvious over Shefflin. It is common to use an adhesive to attach hook and loop fasteners to objects. Shefflin does not appear to disclose the use of an adhesive on the back of the hook and loop fasteners (20 and 22). The use of an adhesive on the back of elements 20 and 22 is considered obvious because it is very common to apply an adhesive on the back of hook and loop fasteners. Therefore, the flexible material can be said to have an adhesive portion (the back of the hook and loop fastener) and a non-stick portion (the top of the hook and loop portion) at the second extreme or on the opposed attaching means.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shefflin, as applied to claim 2 above, and further in view of Hippensteel, U.S. Patent No. 6,836,901. Bergemann does not appear to disclose a non-stick material covering the adhesive. However, if an adhesive were used like the type in Bergemann to attach the first extreme end of the flexible material to the baby's clothing, it would be obvious to use a non-stick material to cover the adhesive as disclosed by Hippensteel (figure 1A, numeral 118) to keep the adhesive sticky.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shefflin, as applied to claim 2 above, and further in view of Yancy, U.S. Patent No. 6,752,824. Shefflin does not disclose the use of a sterile package. However, Yancy discloses the use of a sterile package for use with pacifiers. It would be obvious to use a sterile package in Shefflin to keep the pacifier or the related pacifier attacher clean.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shefflin, as applied to claim 2 above, and further in view of Roberts, U.S. Patent No. 4,990,157. Shefflin does not disclose the use of plastic as the flexible material. However, Roberts discloses that it is old and well known in the art to use plastic (which is resilient, waterproof, and can be considered decorated in a child-friendly manner) as the flexible material attaching a pacifier to a baby's clothing.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Thomas Andersen whose telephone number is (571) 272-8024. The examiner can normally be reached on M-F 8AM-4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Thomas Andersen

June 15, 2006

A handwritten signature in black ink, appearing to read "MJ Hayes", written in a cursive style.

MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER